SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2003-000004-001 DT 09/29/2003

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED:_____

TARALYN LYON JOSEPH E COLLINS

v.

BUCKEYE UNION HIGH SCHOOL DISTRICT NO 201 (001) GEORGIA A STATON

MINUTE ENTRY

Pursuant to A.R.S §12-910(e) this court may review administrative decisions in special actions and proceedings in which the State is a party:

> The court may affirm, reverse, modify or vacate and remand the agency action. The court shall affirm the agency action unless after reviewing the administrative record and supplementing evidence presented at the evidentiary hearing the court concludes that the action is not supported by substantial evidence, is contrary to law, is arbitrary and capricious or is an abuse of discretion.

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings, exhibits made of record and the memoranda and oral argument submitted.

1. Facts and Background

On November 6, 2002, at 2:00 p.m., Kelly Hunt, an Estrella High School teacher, called the assistant principal Eric Godfrey to advise him that one of her students had been "peculiar or different." Hunt commented that this student was hyper, bouncing around, stumbling, and kind of excited.

Godfrey called the student into his office and asked her if she had taken anything, or had drunk anything. Godfrey told the student that a teacher had reported her behavior, that the school wanted to ensure her safety, and that he wanted to determine whether she had violated school policy. The student stated that she had not drunk anything. The student then blew into Godfrey's face and he did not detect alcohol. After Godfrey asked the student if she would pass a Breathalyzer test, she admitted that she had drunk some alcohol in the locker room while getting dressed. The student stated that Petitioner Lyon and another student had drank with her.

Based on this information Godfrey sent for the Plaintiff and another student. Godfrey told Lyon (the Plaintiff) that a student had reported her behavior and he wanted to ensure her safety and determine whether she had violated school policy on drinking alcohol. Lyon stated that she had not.

Godfrey informed principal Jerry Nunez about the situation. Godfrey and Nunez met with the student who accused Lyon of drinking alcohol, then they contacted the Goodyear Police Department pursuant to District Regulation J-2300. The principal then met with Lyon and asked what had happened. Lyon admitted that she drank alcohol. The bottles that the students drank from was found and the students identified them. After the Officer left, Godfrey advised Lyon to call her parents because she was going to be suspended. Pursuant to district policy, the school gave Lyon a short-term suspension for ten days.

One week into the ten day suspension, on November 13, 2002, Nunez sent Lyon’s parents a letter pursuant to the District Regulation J-4840, notifying them that a formal hearing would be held on November 21, 2002, regarding the administration's recommendation that the Petitioner be suspended for the remainder of the 2002-03 school year. On November 21, 2002, the formal hearing was held and the parties were each allowed to present their positions through exhibits and witness testimony. The Hearing Officer concluded that Lyon had consumed alcohol on campus in violation of District policy. Based on Lyon’s good academic standing and lack of prior discipline, the Hearing Officer ordered that the long term probation was not justified and that Lyon could return to school after her short term suspension concluded. Lyon appealed the Hearing Officer's order to the District Governing Board.

The District Governing Board reviewed the Hearing Officer's order on December 6, 2002. After reviewing the record, the Governing Board upheld the Hearing Officer's findings that Lyon violated policy pertaining to alcohol consumption. The Board also modified the Hearing Officer's Order to adopt Nunez's recommendation that Lyon be given an additional five (5) day suspension and that she enter into a disciplinary contract for the remainder of the school year. Lyon now seeks review of her suspension.

Lyon raises five issues on appeal. The first issue is whether the Defendant's decision was arbitrary or capricious. The second issue is whether the Defendant violated Lyon’s right of due process when Defendant suspended Lyon from the public school. The third issue is whether the

Defendant subjected Lyon to double jeopardy in violation of the United States and Arizona Constitutions. The fourth issue is whether Lyon violated the Defendant's policy against unacceptable conduct on school property as a student. The fifth issue that Lyon raises is whether the Hearing Officer was impartial or did he "rubber stamp" the actions of the Defendant.

2. Standard of Review

The scope of review of an agency determination under administrative review places the burden upon the Plaintiff to demonstrate that the administrative decision was arbitrary, capricious, or involved an abuse of discretion.[1] Only where the administrative decision is unsupported by competent evidence may this court set it aside as being arbitrary and capricious.[2] A reviewing court may not substitute its own discretion for that exercised by an administrative agency,[3] but must only determine if there is any competent evidence to sustain the decision.[4]

3. Administrative Decision Arbitrary and Capricious

Lyon argues that her suspension for ten (10) days, plus another suspension for a year, under the facts was arbitrary and capricious conduct by any standard of common sense. Under the Administrative Review Act, the Superior Court decides only whether the decision was illegal, arbitrary, capricious or an abuse of discretion.[5] In determining whether an administrative agency has acted arbitrarily or capriciously and therefore abused its discretion, a review of the record must show that here has been unreasoning action, without consideration and disregard for the facts and circumstances.[6] Where there is room for two opinions, the action is not arbitrary or capricious if exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached.[7]

Lyon has failed to demonstrate that there was not enough evidence to sustain the decision. The record supports the defendant's actions and decisions. Lyon's argument that the decision was arbitrary and capricious "by any standard of common sense " without citation to any law that supports this assertion is without merit.

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[1] *Sundown Imports, Inc. v. Ariz. Dept. of Transp.*, 115 Ariz. 428, 431, 565 P.2d 1289, 1292 (App. 1977); *Klomp v. Ariz. Dept. of Economic Security*, 125 Ariz. 556, 611 P.2d 560 (App. 1980).
[2] *City of Tucson v. Mills*, 114 Ariz. 107, 559 P.2d 663 (App. 1976).
[3] *Ariz. Dept.of Economic Security v. Lidback*, 26 Ariz. App. 143, 145, 546 P.2d 1152, 1154 (1976).
[4] *Schade v. Arizona State Retirement System*, 109 Ariz. 396, 398, 510 P.2d 42, 44 (1973); *Welsh v. Arizona State Board of Accountancy*, 14 Ariz.App. 432, 484 P.2d 201 (1971).
[5] Brodsky v. City of Phoenix Police Dept. Retirement System Bd., 183 Ariz. 92, 900 P.2d 1228 (Ariz. App. 1995).
[6] Petras v. Arizona State Liquor Bd., 129 Ariz. 449, 452, 631 P.2d 1107, 1110 (Ariz. Ct. App. 1981) quoting Tucson Public Schools, District No. 1 Pima County v. Green, 17 Ariz. App. 91, 94, 495 P.2d 861, 864 (1972).
[7] Id.

The evidence in the record clearly shows that the Board did not act arbitrarily and capriciously, or abuse its discretion in affirming the Hearing Officer's finding that Lyon consumed alcohol in violation of the District policy. The evidence includes (1) Lyon's admissions to the Assistant Principal Eric Godfrey, Principal Nunez, and Officer Miller that she drank alcohol from the bottle in the girls' gym with two other students; (2) Student B admitted to Godfrey and Nunez that Lyon drank alcohol with her; (3) Lyon admitted that she was guilty of drinking alcohol; (4) Lyon also admitted that the two bottles found by Mr. Godfrey in the girls' gym were those used to mix and consume the alcohol.

Based on the evidence, the Board was justified in following its policy to place Lyon on long-term suspension. District Regulation JK-RC states that if a student violates a Group A offense (drug/alcohol use or possession) long term suspension or expulsion shall be imposed. Lyon clearly violated the school's no tolerance policy on alcohol, and her characterization of her actions as a "sip" does not negate the fact that she drank alcohol, and, therefore, she violated school policy.

4. Due Process Violation

Lyon asserts that the Defendant did not afford her due process. The Plaintiff, Taralyn Lyon, claims that she received "absolutely no notice before the ten (10) day suspension was ordered on November 6, 2002,"[8] and the notice of November 13, 2002, for a hearing was insufficient to prepare, thus depriving her of her due process rights.

Due Process consists of the right to be heard under the Due Process Clause of the 14th Amendment to the United States Constitution and Section 4 of Article II of the Arizona Constitution. The Supreme Court has stated that "At the very minimum, students facing suspension…must be given some kind of notice and afforded some kind of hearing…."[9] The court also stated that the "…timing and content of the notice and the nature of the hearing will depend on appropriate accommodation of the competing interests…."[10] Furthermore, the Court stated that "…the hearing should precede the student's removal…but if prior notice and hearing is not feasible…the necessary notice should follow as soon as practicable."[11]

The District did not deprive Lyon of her due process rights. District regulations JKRC enumerates the due process rights afforded to every student in the District. These rights include: (1) the right to know the charges; (2) the right to respond to the charges, telling the student's side

[8] Petitioner Brief at p. 5.
[9] Goss v. Lopez, 419 U.S. 565, 577, 95 S. Ct. 729, 738 (1975) quoting Baldwin v. Hale, 1 Wall, 223, 233, 17 L.Ed. 531 (1864).
[10] Id. at 738.
[11] Id. at 738

of the story; and (3) the right to appeal the decision to the Governing Board, as outlined in Policy JKD, if the suspension from school is for more than nine (9) days.

The record reflects that Lyon was afforded each of these rights. Mr. Godfrey fully informed Lyon of the charges against her when she first arrived at his office on November 6, 2002. Godfrey told Lyon that a student had reported her behavior, that the school wanted to ensure her safety, and that he wanted to determine whether she had violated school policy. Godfrey then gave Lyon time to tell her story. On November 13, 2002, the Principal, Mr. Nunez' letter to the Lyon family further informed them of the charges and the hearing scheduled for November 21, 2002. Lyon, through counsel, had the opportunity to present her position at the hearing. Exercising her due process rights Lyon has filed an appeal.

In this case, Lyon was afforded notice and a hearing and therefore, this court finds that the Plaintiff was afforded due process.

5. Double Jeopardy

Lyon argues that she is being tried and punished for the same misconduct three (3) times - once for ten (10) days, once for a year and an additional five (5) days.

The double jeopardy clause of the Fifth Amendment to the United States Constitution provides in pertinent part that "No person shall…be subject for the same offence to be twice put in jeopardy of life or limb…."[12] Double jeopardy protects against a second prosecution for the same offense after acquittal, a second prosecution for the same offense after conviction, and multiple punishments for the same offense.[13]

Lyon has failed to make a coherent argument based on legal authority to establish a double jeopardy claim. The conclusory statement the Plaintiff makes regarding being punished twice, provides no framework for analysis for this court to consider her claim, especially when the claim is not accompanied by a citation to cases or other legal authority.

Defendant's response to the claim incorrectly asserts that double jeopardy only applies to criminal defendants. The Supreme Court, in United States v. Halper, considered and discussed "….under what circumstances a civil penalty may constitute 'punishment' for the purposes of double jeopardy (emphasis added)."[14]

[12] U.S. Const. amend. V.
[13] Dept. of Revenue of Montana v. Ranch, 511 U.S. 767, 769 fn. 1 (1994) quoting North Carolina v. Pearce, 395 U.S. 711, 717 (1969).
[14] 490 U.S. 435, 436 (1989).

Lyon appealed to the School Board. The School Board's policy JKD, Step 6, states that "If the Board determines that the punishment was not reasonable, they may modify the punishment."[15] In this case, the Board determined that the Hearing Officer's punishment was not reasonable and modified it to include an additional five (5) day suspension. Despite a recommendation to suspend Lyon for the year, the Board accepted the Principal's recommendation to stay the year long suspension, which was appropriate under the facts of this case. The Board did, however, modify the punishment with an additional five days, instead of a year, pursuant to their authority outlined in the School Board's policy. This was not multiple punishment for the same acts, but a review of the original punishment, at Plaintiff's request.

Therefore, this court concludes that the Petitioner has not been subject to multiple punishments for the same crime, violating her right to be free from double jeopardy.

6. School Board Policy

Lyon argues that her conduct did not violate the school policy. She contends that the Defendant's written policy includes that "Group A offenses are those that are generally felonious in nature.[16] Consuming alcohol on school grounds is a Group A offense. Lyon further claims that implicit within this classification is a requirement that her act must possess some type of *mens rea*. She claims that the School Board must prove that she intentionally consumed alcohol on school grounds.

The School Board correctly claims that the Plaintiff is precluded from raising issues in this administrative appeal that she did not raise before the Hearing Officer and the School Board. Arizona courts have held that the "failure to raise an issue before an administrative tribunal precludes judicial review of that issue on appeal unless the issue is judicial in nature."[17] This court concludes that Plaintiff has waived this issue by her failure to raise it prior to filing this administrative appeal action.

7. Impartial Hearing Officer

Lyon claims that the hearing officer was not impartial and assisted the School Board. The lack of impartiality, Plaintiff argues, is demonstrated by two things: (1) the fact that the hearing officer failed to admit the notes of the Assistant Principal into evidence, which violated the Best Evidence Rule; (2) and the hearing officer allowed testimony concerning a vital piece of evidence, but would not allow the evidence admitted into the record. More importantly, though, the Plaintiff is unable to demonstrate any prejudice resulting from the admission or rejection of

[15] Buckeye Union High School District No. 201, Regulation JKD.
[16] Petitioner's Opening Brief, at p. 8.
[17] Rouse v. Scottsdale Unified School Dist. No 48, 156 Ariz. 369, 371, 752 P.2d 22, 24 (App. 1987).

evidence. These rulings, contrary to the argument of the Plaintiff, do not demonstrate impartiality.

IT IS THEREFORE ORDERED affirming the decision of Buckeye Union High School District.

IT IS FURTHER ORDERED denying all relief requested by Plaintiff, Taralyn Lyon.

IT IS FURTHER ORDERED that counsel for the Defendant shall lodge an order consistent with this opinion by October 30, 2003.